

Assembly Bill No. 2464

CHAPTER 426

An act to amend Sections 3013, 3014, 3016, 3017, 3018, 3019, 3023, 3027, 3040, 3042, 3044, 3045, 3054, 3059, 3070, 3076, and 3125 of, to add Sections 3003, 3004, 3005, 3006, 3025.1, 3025.2, 3025.7, 3028, 3041.1, and 3046 to, to repeal Sections 3012, 3015, 3020, 3021, 3022, 3023.1, 3026.5, 3027.5, 3029, 3047, 3050, and 3052 of, and to repeal and add Sections 3000, 3055, and 3075 of, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 9, 2004. Filed
with Secretary of State September 9, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2464, Pacheco. Optometry.

Existing law makes the State Board of Optometry responsible for regulating and licensing those engaged in the practice of optometry. Existing law prohibits a board member from having a financial interest in a prospective board purchase or contract. Existing law requires the board to meet at least once a year and authorizes it to adopt specified rules and regulations. Under existing law, the board is required and authorized to maintain specified records and to publish and distribute certain information. Existing law provides for a secretary to the board and authorizes traveling and other necessary expenses for that office. Under existing law, an optometrist is required to notify the board of the address of his or her practice, and the board is authorized to send any requisite notices to that address by United States mail. Existing law authorizes the board to visit and examine educational institutions that provide optometric regulation.

This bill would revise and recast provisions relating to the regulation of optometrists under the Optometry Practice Act. The bill would revise the authority of the board to adopt regulations, and would define and alter certain terms. The bill would require the board to meet every calendar quarter. The bill would delete the prohibition on a board member having a financial interest in a prospective board purchase or contract. The bill would also revise the recordkeeping requirements of the board. The bill would delete the provisions authorizing the payment of expenses for the board's secretary and requiring the board to publish and distribute certain information. The bill would also require the board to publish its notices on its Internet Web site. The bill would delete the

board's authority to visit and examine optometric educational institutions.

Existing law requires an applicant for examination or registration as an optometrist to meet specified requirements.

This bill would revise the application requirements and the standards for examination and licensure as an optometrist.

Existing law requires an optometrist to post a certificate of registration in his or her office or place of practice. Existing law also requires optometrists performing certain functions to meet certain continuing education requirements. Existing law requires an optometrist who temporarily practices away from his or her registered regular place of practice to give a patient fitted or supplied with glasses a receipt containing specified information.

This bill would require an optometrist to post specified information at each place of practice. The bill would revise the continuing education requirements for optometrists performing certain functions. The bill would revise the information that must be provided on a receipt and would require any licensed optometrist who fits or supplies a patient with lenses to provide the patient with a receipt.

Because the bill would expand the scope of an existing crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 3000 of the Business and Professions Code is repealed.

SEC. 2. Section 3000 is added to the Business and Professions Code, to read:

3000. This chapter constitutes the chapter on optometry. It shall be known and may be cited as the Optometry Practice Act.

SEC. 3. Section 3003 is added to the Business and Professions Code, to read:

3003. As used in this chapter, "optometrist" means a person who is licensed to practice optometry in this state under the authority of this chapter.

SEC. 4. Section 3004 is added to the Business and Professions Code, to read:



3004. As used in this chapter, “board” means the State Board of Optometry.

SEC. 5. Section 3005 is added to the Business and Professions Code, to read:

3005. As used in this chapter, “place of practice” means any location where optometry is practiced.

SEC. 6. Section 3006 is added to the Business and Professions Code, to read:

3006. As used in this chapter, the term “advertise” and any of its variants include the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, tag, window display, store sign, radio announcement, or any other means or methods now or hereafter employed to bring to the attention of the public the practice of optometry or the prescribing, fitting, or sale, in connection therewith, of lenses, frames, or other accessories or appurtenances.

SEC. 7. Section 3012 of the Business and Professions Code is repealed.

SEC. 8. Section 3013 of the Business and Professions Code is amended to read:

3013. (a) Each member of the board shall hold office for a term of four years, and shall serve until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

(b) Vacancies occurring shall be filled by appointment for the unexpired term.

(c) The Governor shall appoint three of the public members and the six members qualified as provided in Section 3011. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(d) No board member serving between January 1, 2000, and June 1, 2002, inclusive, shall be eligible for reappointment.

(e) For initial appointments made on or after January 1, 2003, one of the public members appointed by the Governor and two of the professional members shall serve terms of one year. One of the public members appointed by the Governor and two of the professional members shall serve terms of three years. The remaining public member appointed by the Governor and the remaining two professional members shall serve terms of four years. The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall each serve for a term of four years.

SEC. 9. Section 3014 of the Business and Professions Code is amended to read:



3014. The board shall elect from its membership a president, a vice president, and a secretary who shall hold office for one year or until the election and qualification of a successor.

SEC. 10. Section 3015 of the Business and Professions Code is repealed.

SEC. 11. Section 3016 of the Business and Professions Code is amended to read:

3016. Each member of the board shall receive a per diem and expenses as provided in Section 103.

SEC. 12. Section 3017 of the Business and Professions Code is amended to read:

3017. The board shall hold regular meetings every calendar quarter.

Special meetings shall be held upon request of a majority of the members of the board or upon the call of the president.

SEC. 13. Section 3018 of the Business and Professions Code is amended to read:

3018. The board shall keep an accurate record of all of its licensees, proceedings, and meetings.

SEC. 14. Section 3019 of the Business and Professions Code is amended to read:

3019. The board shall keep a record of all prosecutions for violations of this chapter and of all applications for licensure and examination.

SEC. 15. Section 3020 of the Business and Professions Code is repealed.

SEC. 16. Section 3021 of the Business and Professions Code is repealed.

SEC. 17. Section 3022 of the Business and Professions Code is repealed.

SEC. 18. Section 3023 of the Business and Professions Code is amended to read:

3023. For the purposes of this chapter, the board shall accredit schools, colleges, and universities in or out of this state providing optometric education, that it finds giving a sufficient program of study for the preparation of optometrists.

SEC. 19. Section 3023.1 of the Business and Professions Code is repealed.

SEC. 20. Section 3025.1 is added to the Business and Professions Code, to read:

3025.1. The board may adopt rules and regulations that are, in its judgment, reasonable and necessary to ensure that optometrists have the knowledge to adequately protect the public health and safety by establishing educational requirements for admission to the examination for licensure.



SEC. 21. Section 3025.2 is added to the Business and Professions Code, to read:

3025.2. The board may adopt rules and regulations that are, in its judgment, reasonable and necessary to ensure that optometrists have the knowledge to adequately protect the public health and safety by governing its accreditation of schools, colleges, and universities that provide optometric education. In promulgating these rules and regulations, or in extending accreditation, the board may, to the extent that it deems consistent with the purposes of this chapter, recognize, accept, or adopt the advice, recommendation, accreditation, or approval of a nationally recognized accrediting agency or organization.

SEC. 22. Section 3025.7 is added to the Business and Professions Code, to read:

3025.7. Except as provided in Sections 3129 and 3130, nothing contained in Section 651.3 shall be construed as authorizing the board to adopt, amend, or repeal rules and regulations relating to price fixing or advertising of commodities.

SEC. 23. Section 3026.5 of the Business and Professions Code is repealed.

SEC. 24. Section 3027 of the Business and Professions Code is amended to read:

3027. The board shall employ an executive officer and other necessary assistance in the carrying out of the provisions of this chapter.

The executive officer shall perform the duties delegated by the board and shall be responsible to it for the accomplishment of those duties. The executive officer shall not be a member of the board. With the approval of the Director of Finance, the board shall fix the salary of the executive officer. The executive officer shall be entitled to traveling and other necessary expenses in the performance of his duties.

SEC. 25. Section 3027.5 of the Business and Professions Code is repealed.

SEC. 26. Section 3028 is added to the Business and Professions Code, to read:

3028. The Attorney General shall act as the legal counsel for the board and his or her services shall be a charge against it.

SEC. 27. Section 3029 of the Business and Professions Code is repealed.

SEC. 28. Section 3040 of the Business and Professions Code is amended to read:

3040. It is unlawful for a person to engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself or herself out as an optometrist without having first obtained a certificate of registration from the board under the provisions of this



chapter or under the provisions of any former act relating to the practice of optometry. The practice of optometry includes the performing or controlling of any acts set forth in Section 3041.

In any prosecution for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie evidence of the practice of optometry.

SEC. 29. Section 3041.1 is added to the Business and Professions Code, to read:

3041.1. With respect to the practices set forth in subdivisions (b), (d), and (e) of Section 3041, optometrists diagnosing or treating eye disease shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held.

SEC. 30. Section 3042 of the Business and Professions Code is amended to read:

3042. The provisions of this chapter do not prevent a licensed physician and surgeon from treating or fitting glasses to the human eye, or from doing any act within the practice of optometry, or a licensed physician and surgeon or optometrist from filling prescriptions or orders, nor do they prevent the replacing, duplicating or repairing of ophthalmic lenses, frames, or fittings by persons qualified to write or fill prescriptions or orders under the provisions of this chapter, nor prevent the doing of the mechanical work upon those lenses, frames, or fittings by an assistant, nor prevent an assistant acting under the responsibility and direction of a physician and surgeon or an optometrist from using any optical device in connection with ocular exercises, vision training, or orthoptics, or acts set forth in Section 2544.

It is unlawful for a person to dispense, replace, or duplicate an ophthalmic lens without a prescription or order from a licensed physician and surgeon or optometrist.

SEC. 31. Section 3044 of the Business and Professions Code is amended to read:

3044. A person over the age of 18 years desiring to engage in the practice of optometry in this state may file an application for examination and an application for licensure. The application shall be accompanied by the fee required by this chapter.

SEC. 32. Section 3045 of the Business and Professions Code is amended to read:

3045. Applications shall be verified by the oath of the applicant and shall contain information and evidence satisfactory to the board showing the eligibility of the applicant.

SEC. 33. Section 3046 is added to the Business and Professions Code, to read:



3046. In order to obtain a license to practice optometry in California, an applicant shall have graduated from an accredited school of optometry, passed the required examination for licensure, and not have met any of the grounds for denial established in Section 480. The proceedings under this section shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 34. Section 3047 of the Business and Professions Code is repealed.

SEC. 35. Section 3050 of the Business and Professions Code is repealed.

SEC. 36. Section 3052 of the Business and Professions Code is repealed.

SEC. 37. Section 3054 of the Business and Professions Code is amended to read:

3054. The passing grades for the licensure examination shall be based on psychometrically sound principles of establishing minimum qualifications and levels of competency. If an applicant fails to pass any section of the examination, he or she may be examined in any succeeding examination held during the next five years only in those sections in which he or she failed to obtain a passing grade.

SEC. 38. Section 3055 of the Business and Professions Code is repealed.

SEC. 39. Section 3055 is added to the Business and Professions Code, to read:

3055. The board shall issue a license to an applicant who meets the requirements of this chapter, including the payment of the prescribed licensure, certification, or renewal fee, and who meets any other requirement in accordance with state law. A license or certificate issued under the chapter shall be subject to renewal as prescribed by the board and shall expire unless renewed in that manner. The board may provide for the late renewal of a license or certificate as provided for in Section 163.5.

SEC. 40. Section 3059 of the Business and Professions Code is amended to read:

3059. (a) It is the intent of the Legislature that the public health and safety would be served by requiring all holders of licenses to practice optometry granted under this chapter to continue their education after receiving their licenses. The board shall adopt regulations that require, as a condition to the renewal thereof, that all holders of licenses submit proof satisfactory to the board that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study



satisfactory to the board or by other means deemed equivalent by the board.

(b) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for reasons of health, military service, or other good cause.

(c) If for good cause compliance cannot be met for the current year, the board may grant exemption of compliance for that year, provided that a plan of future compliance that includes current requirements as well as makeup of previous requirements is approved by the board.

(d) The board may require that proof of compliance with this section be submitted on an annual or biennial basis as determined by the board.

(e) The board may adopt regulations to require licensees to maintain current certification in cardiopulmonary resuscitation. Training required for the granting or renewal of a cardiopulmonary certificate shall not be credited towards the requirements of subdivision (a) or (f).

(f) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 shall complete a total of 50 hours of continuing education every two years in order to renew his or her certificate. Thirty-five of the required 50 hours of continuing education shall be on the diagnosis, treatment, and management of ocular disease in any combination of the following areas:

- (1) Glaucoma.
- (2) Ocular infection.
- (3) Ocular inflammation.
- (4) Topical steroids.
- (5) Systemic medication.
- (6) Pain medication.

(g) The board shall encourage every optometrist to take a course or courses in pharmacology and pharmaceuticals as part of his or her continuing education.

(h) The board shall consider requiring courses in child abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected children.

(i) The board shall consider requiring courses in elder abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected elder persons.

SEC. 41. Section 3070 of the Business and Professions Code is amended to read:

3070. Before engaging in the practice of optometry, each licensed optometrist shall notify the board in writing of the address or addresses where he or she is to engage, or intends to engage, in the practice of optometry and, also, of any changes in his or her place of practice. The



practice of optometry is the performing or the controlling of any of the acts set forth in Section 3041.

SEC. 42. Section 3075 of the Business and Professions Code is repealed.

SEC. 43. Section 3075 is added to the Business and Professions Code, to read:

3075. An optometrist shall post in each location where he or she practices optometry, in an area that is likely to be seen by all patients who use the office, his or her current license or other evidence of current license status issued by the board. The board may charge a fee not to exceed twenty-five dollars (\$25) for each issuance of evidence of current licensure.

SEC. 44. Section 3076 of the Business and Professions Code is amended to read:

3076. A licensed optometrist shall deliver to each patient fitted or supplied with lenses a receipt that contains his or her signature and all of the following information:

- (a) His or her place of practice.
- (b) The number of his or her license.
- (c) A specification of the lenses furnished, in accordance with prescription release laws.
- (d) The amount charged for them.
- (e) Any referral for additional treatment.

SEC. 45. Section 3125 of the Business and Professions Code is amended to read:

3125. It is unlawful to practice optometry under a false or assumed name, or to use a false or assumed name in connection with the practice of optometry, or to make use of any false or assumed name in connection with the name of a person licensed pursuant to this chapter. However, the board may issue written permits authorizing an individual optometrist or an optometric group or optometric corporation to use a name specified in the permit in connection with its practice if, and only if, the board finds to its satisfaction that:

(a) The place or establishment, or the portion thereof, in which the applicant or applicants practice, is owned or leased by the applicant or applicants, and the practice conducted at that place or establishment, or portion thereof, is wholly owned and entirely controlled by the applicant or applicants; provided, however, that where the applicant or applicants are practicing optometry in a community clinic, as defined in subdivision (a) of Section 1204 of the Health and Safety Code, this subdivision shall not apply.

(b) The name under which the applicant or applicants propose to operate is in the judgment of the board not deceptive or inimical to



enabling a rational choice for the consumer public and contains at least one of the following designations: “optometry” or “optometric”; provided, however, that where the applicant or applicants are practicing optometry in a community clinic, as defined in subdivision (a) of Section 1204 of the Health and Safety Code, this subdivision shall not apply. In no case shall the name under which the applicant or applicants propose to operate contain the name or names of any of the optometrists practicing in the community clinic.

(c) The names of all optometrists practicing at the location designated in the application are displayed in a conspicuous place for the public to see, not only at the location, but also in any advertising permitted by law.

(d) No charges which could result in revocation or suspension of an optometrist’s certificate to practice optometry are pending against any optometrist practicing at the location.

Permits issued under this section by the board shall expire and become invalid unless renewed at the times and in the manner provided in Article 7 (commencing with Section 3145) for the renewal of certificates issued under this chapter. The board may charge an annual fee, not to exceed ten dollars (\$10) for the issuance or renewal of each such permit.

Any permit issued under this section may be revoked or suspended at any time that the board finds that any one of the requirements for original issuance of a permit, other than under subdivision (d), is no longer being fulfilled by the individual optometrist, optometric corporation, or optometric group to whom the permit was issued. Proceedings for revocation or suspension shall be governed by the Administrative Procedure Act.

In the event the board revokes or suspends the certificate to practice optometry of an individual optometrist or any member of a corporation or group to whom a permit has been issued under this section, the revocation or suspension shall also constitute revocation or suspension, as the case may be, of the permit.

SEC. 46. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

